



## Lamoine Board of Selectmen

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### Minutes of May 13, 2010

Chair Jo Cooper called the meeting to order at 7:00 PM

Present were: Selectmen William Brann, Richard Fennelly Jr., Gary McFarland, S. Josephine Cooper, Cynthia Donaldson; Administrative Assistant Stu Marckoon, Deputy Code Enforcement Officer & Road Commissioner Michael Jordan, Ron Fritz, Kathleen DeFusco, George Powell (State of Maine), Duncan, Blake and William Haass, Rob Liebow (AOS 91 Superintendent), Gail Marshall (Mt. Desert School Board), Barbara Davis, Deputy Harbor Master Kevin Murphy, Harbor Master David Herrick, Brian Hubbell (Chairman of MDI High School Committee), Jay McIntosh (Manager, Lamoine State Park), Dick Broom (MD Islander), Brett Jones, Richard and Connie Wallace, Fire Chief George Smith, Conservation Commissioner Carol Korty, Local School Advisory Committee Members Gordon Donaldson, Bonnie Marckoon, and Tammy Dickey, and Skip Strong (Southwest Harbor School Board)

**Agenda** – Jo asked if Bill Haass and Barbara Davis should be put on the agenda. Mr. Haass said they were present in case the assessors were present to meet with the Selectmen. Jo asked if the assessors discussed a joint meeting date. Michael Jordan said they did not. He said the Assessors meet next on May 26<sup>th</sup>, but did not discuss having a joint meeting on that date. Jo said the Selectmen received a communication from Mrs. Davis's lawyer. Richard said Mr. Haass requested a joint meeting and he had assumed it would take place this evening. Stu said he had communicated to the assessors and he's waiting to hear back from the Board. Jo said she is concerned about getting this issue resolved.

Mr. Haass said they were present on Tuesday and they were frustrated that Assessor Towne disagreed with the state finding. He said he has letters from an attorney. Richard said it's difficult for the Selectmen to deal with this because the Board of Selectmen is independent of the assessor's board and the Selectmen don't have a lot to do with the assessors' business. He said about the only thing is authorization of expenditures they might ask for. Jo asked what happens when a tax abatement is requested – whether it goes to the assessors or to the Selectmen. Stu said it depends on the timing of the abatement request, whether it goes to the Assessors or the Municipal Officers.

Richard read an excerpt from the State Board of Property Tax Review decision in the case Mrs. Davis brought against the town. He said it's not the Board of Selectmen's business to deal with that. Jo said the Selectmen did not set a time certain, and could ask to meet with the Assessors on May 27<sup>th</sup>. Mr. Jordan said they had not met as a board since talking with attorney Ed Bearor, and the first chance the assessors had to discuss that was on Tuesday night. He said the next meeting is May 26<sup>th</sup>. Jo said the Selectmen could ask if the Assessors wish to meet with them on the 27<sup>th</sup>. She said she didn't feel comfortable dealing with this matter tonight because the Selectmen have asked to meet with the assessors. Richard said it would be useful to have the

assessors' board meet with the Selectmen so everyone can understand where we are with the issue.

**Minutes of April 29, 2010** – Richard said he had a pair of typos. Jo moved to approve with the corrections. Gary 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Expenditure Warrant 22** – Selectmen signed expenditure warrant #22 for \$198,349.83. There were questions regarding payment to the Department of Inland Fisheries and Wildlife and a small gas bill for tree debris removal. Stu explained both bills briefly.

**Cash & Budget Report** – There were no questions regarding the written report.

**Checking Reconciliation** – Selectmen signed the statement expressing satisfaction with the checking account reconciliation.

**Investment Interest** – Stu said he expects this to be the last month for losing money on investment interest according to The First.

**Meeting with Bureau of Parks** – George Powell of the Bureau of Parks and Lands apologized for an e-mail response he'd made to a member of the public blaming the Planning Board for failure to upgrade the boat launch ramp at Lamoine State Park. He said it could be better characterized as a miscommunication. He introduced himself as the director of boating facilities for the Bureau of Parks and Lands.

Jo said the town's concern is that the ramp at Lamoine State Park be useable for the public and the working waterfront. Mr. Powell said the program is all geared toward recreational boating access. He said the rules prohibit commercial use of facilities. He said the Bureau recognizes that a whole variety of commercial fishing purposes exist all along the coast. He said they do not object unless it conflicts with recreational access. Jo said it's a plus for park visitors to be able to see working lobster boats.

Richard noted that several commercial fishermen have helped recover recreational boats. He said it's a good benefit having the commercial fishermen present. Jo said as a resident, it's critical to the town that commercial access is allowed. She said she sees ocean access being more and more reduced. She said the Selectmen have encouraged using natural resources by local business.

Richard asked to whom Mr. Powell referred when he mentioned "our facilities". Mr. Powell said the citizens of the state. He said the legislature established the agency as a recreational organization. Richard said he understands that the state cannot expend funds on commercial facilities, but he was talking about access. Mr. Powell said that in addition to boating facility rules, there are state parks rules. Richard asked about the relationship between the state park and the town. Jo said there has always been a debate over why local residents have to pay a fee to get into the state park. She said it's an exceptional park. She said she is concerned that the ramp remains usable and that access not be limited.

Mr. Powell asked if there was a perceived threat to commercial users. Jo said the last time the state came up with fancy plans for change, there didn't seem to be any consideration of the commercial fishermen. Richard said he understands now why that happened because recreational users almost exclude commercial fishermen. Mr. Powell said the state is concerned about limited commercial access. There was a brief discussion of the previous plans submitted by the state park, and skiff tie up restrictions. Jo said there are improvements needed to the boat ramp because it is a multi-use park. Mr. Powell showed off the original plan for the ramp area and a discussion followed about the set-up and the lay of the land.

Jo asked what the process would be to improve the ramp. Mr. Powell said there were concerns stated from the Planning Board the last time, including wanting to designate the former coaling station as an historic site, and put limitations on the site. A short discussion followed. Jo said the desire for story boards for the coaling station still exists. Mr. Powell said the other concern stated by the Planning Board was to address pedestrian traffic, and the desire to do a traffic study which would have run up the cost. A short discussion followed on the issue with pedestrians, the change of Shoreland Zone at the park, and the setbacks required.

Jo asked Mr. Powell if they could approach the facility with a new plan. Mr. Powell said they could, but there is no funding available. He said they could start earlier with design work, but there would be no money until 2012. Richard asked how to get the project into the queue. Mr. Powell said he would put it on the list, and try to pursue improvements as quickly as they can. Jo said she didn't see traffic or historic concerns as a big impediment.

Park Manager Jay McIntosh said the ramp has not deteriorated all that much. He said rule enforcement issues exist in the launch area. He said there is a verbal understanding with the fishermen, but there is not yet full compliance with labeling the skiffs. A brief discussion followed on the park's skiff rules. Mr. McIntosh asked if a copy of the park rules could be included with the mooring permits. A short discussion followed on day use restrictions.

Mr. Haass said he would like to see something done at the end of the ramp because it is pretty rough. He asked if the Harbor Fund could be used to maintain the state ramp. Mr. Powell said he would look at the end of the ramp, and there was a short discussion about using the harbor fund. Jo asked if something in writing could be submitted to the state. Harbor Master David Herrick said he would help with that.

Mr. McIntosh said he would like to see the speed buoys installed by the town. Mr. Herrick said he had one left. Richard said he could get some more. Mr. McIntosh asked about guest moorings. Jo said the Selectmen talked about that. Stu said town meeting authorized the Selectmen and Harbor Master to come up with a guest mooring program. Mr. McIntosh said there had been a mooring used by the former Friends of Lamoine State Park. He said he would have to check on charging a fee to use that, and a short discussion followed. Mr. McIntosh also said the Marine Patrol might be willing to offer a

mooring for guest use. Mr. Haass said the moorings are not used very often. Discussion followed on mooring maintenance.

Cynthia said a committee is working to schedule the celebration for the sculpture that was installed at the park last November. A brief discussion followed on entrance fees.

**Recommendation of Local School Advisory Committee (LSAC) re: Debt Service Factor at MDI High School**

The various committee members and representative from MDI High School introduced themselves.

Gordon Donaldson said a number of parents of MDI students attended their meeting on March 25, 2010 and there was a long conversation about Lamoine continuing to contribute to the debt service at MDI High School. He said the committee voted to recommend putting the issue before the community as to whether it will support additional tuition. Jo asked if that means a special town meeting. Dr. Donaldson said there was enough interest and a strong argument before the LSAC to make the recommendation, but the LSAC took no position. Richard asked how many people attended that meeting.

Jo said the bottom line is that the Board of Selectmen would decide whether this is put before the town. She said the RSU said no to a contract, therefore it would be up to the town. She asked whether it has to be put before the town. Richard said he didn't think so. He said the town is obligated to provide the extra tuition cost of about \$600 per student to MDI because of school choice, but there is no legal obligation to incur the debt service surcharge, at about \$900 additional per student. He said he is adamantly opposed. He said it's enough to pay the additional tuition fee, he does not see the need for an additional surcharge. He said he circulated a petition and got 93 signatures of people opposed to paying the surcharge. Cynthia said if the Selectmen opt to not put this out to a vote, the Board has made the decision.

Jo said whatever the stance is; it's a decision of the town. She said there are lots of concerns regarding the debt service, and it's a school choice issue. She said that puts Lamoine in an odd position that is different from any other town in RSU 24. She asked why this should not be put before the town. Bill said the option to go into debt was not put before the town, and now the town is being asked to pay for that debt. Gary said he understands the public is afraid whether the debt service is paid or not, it will affect school choice. Richard said school choice still exists. He asked if MDI is prepared to forego \$270,000 in tuition revenue for the lack of \$27,000 in debt service surcharge.

Skip Strong said the MDI School Board has not brought the issue up to the board level or taken a vote. He said the 30 or so students from Lamoine are a benefit to MDI High School. He said the towns that sent tuition students to MDI agreed to the additional charge 10-years ago. He said everything has been in flux since consolidation. He said all the towns in AOS 91 have agreed to continue paying the debt service factor. He said Lamoine, Hancock and Surry have lost the choice because of consolidation. He said the

MDI Board believes those towns should continue support for 10-more years. He said the towns on MDI pay the debt service. He said a two year notice would be required to no longer accept students from a particular community.

Richard asked if the capacity of MDI High is 750, the current population is 531 and there are 28 Lamoine students. Superintendent Rob Liebow said that was correct. Richard said MDI is running below capacity and he understands why the school wants Lamoine's students. He said \$276,000 would be needed in property taxes from among the MDI towns to make up for the loss of Lamoine's students. He said he didn't believe MDI would cut off its nose to spite its face. He said the town pays tuition and if MDI feels the need for that additional funding, they should speak to the parents of the MDI students.

Brett Jones said having the parents pay the debt service factor is illegal. Richard said there is an extra fee charged by private schools such as John Bapst. Mr. Liebow said at schools like John Bapst or George Stevens Academy, the tuition is already higher because of the insured value factor which is mandated by law. He said the debt service factor gets dicey because it's an amount that must be agreed upon.

Bill asked why the agreement was set up so that halfway through, the obligation could be reconsidered. Mr. Liebow said the agreement could be up to 10-years, and after that, the rates could be explored. He said the amount would change as time passes and the debt is paid down. There was a brief discussion about the debt service factor laws.

Richard said there is a hidden cost in the sense that MDI students do not attend the RSU high school, and that factors in the state's EPS formula, as funding the RSU is not receiving. Rick Wallace said it would be irresponsible to not let the people decide. He said he wants to send his children to MDI High School. He said having that choice was part of the reason he moved to Lamoine. He said if the town says no to the debt service factor, he could live with that, but he feels that school choice is being pulled from underneath his legs. Jo said if a family didn't have the \$900/year to pay, then choice is being taken away. Connie Wallace said there is no legal obligation to pay it, but what about a moral obligation. She wanted to figure out how much per household it would cost. She said that should be left in the hands of townspeople. A brief discussion of the politics followed.

Jo said she would not be comfortable not putting the issue to a vote. George Smith said there is a perception of a double standard. He noted that he Selectmen sent the issue of purchasing a new fire truck to a referendum vote. He said the town needs to vote on this issue.

Richard moved to take no action on the request from the Local School Advisory Committee. He said he did not see the need to expend town money. There was no 2<sup>nd</sup>.

Dr. Donaldson said there was another piece that could help explain the financial choices. He said it is a common perception that it costs the town only \$8,200 per student to send those students to Ellsworth or Sumner High School and that is simply untrue. He said when Lamoine joined the RSU, it lost the opportunity to pay the state tuition rate at

Ellsworth High School and now instead co-owns the school. He said it costs less to pay tuition than to own the school. He said the town is not obligated to pay the actual cost of educating a high school student, but does pay 8.12% of running the three high schools, and that is higher than the tuition rate. He said he would like more conversation about the actual cost to educate a secondary student.

Gary asked about the number of students at MDI next year. Bonnie Marckoon said it's about a 50% split among the 8<sup>th</sup> grade students, and one plans to attend John Bapst. A short discussion about the numbers followed.

Mr. Liebow said Richard was not correct about the subsidy figures. He said RSU 24 receives the subsidy for the RSU residents who attend MDI High, and pays tuition to MDI. A short discussion followed.

Gail Marshall said she understands Richard's perspective. She said people in her community want to know why the tuition students pay far less than their own students. She said she is telling the taxpayers in her town that the tuition towns are paying what they are supposed to pay. She said if Lamoine doesn't pay the debt service factor, she cannot continue to say that. She said MDI could run a fine school without Lamoine's students. She said she is not alone on the school board with that opinion. She said she would vote to send a notice to say that MDI could no longer accept Lamoine students. Richard asked if Mt. Desert's residents want to incur the extra tax costs due to the lost tuition. Mrs. Marshall said the numbers of students have decreased, and the loss is not a devastating blow.

Brett Jones said he worries about souring a relationship over a trivial amount of money. He said the tax bases of the towns on MDI and Lamoine are very different. Skip Strong said the other AOS 91 member towns have agreed to pay the debt service. He asked how MDI High could allow someone else not to do that. Bill asked if the other towns entered into that decision with a threat. Mr. Strong said there was no threat.

Carol Korty said she feels strongly this issue should come to the town for a vote, and it should be laid out clearly what it would mean for taxes. She said she would like to know the cost. Bill said this drives home the point that the Selectmen can either handle the tough questions or send them to the town. Mrs. Wallace said the Selectmen do not represent her child. Mr. Wallace said he was confused by the reluctance to put this to a vote. Jo said the Selectmen are not representatives; they are the administrators of the town. Mr. Jones said the form of government is the town meeting, and the Selectmen oversee the decisions made by the town meeting. Jo said she has learned a lot tonight and this is a choice issue, and she said in thinking about it, and it's not a choice for her to make, but it is up for the town to decide.

Stu asked what the process would be. He asked what question needed to be asked of the voters. He asked whether the Selectmen have the authority to enter a contract. Mr. Liebow said he tried to put the decision making authority with the town into the contract the RSU rejected. He said the town could choose to raise the money. A brief discussion followed on the wording of the question.

Jo said the Board could decide tonight to put the issue before the town and figure out later how to word it. Richard asked if and who would get a legal opinion. Jo moved to put the question before the town at a special open town meeting. Stu asked what the question is. Jo asked if it would be to raise and appropriate the money for the extra debt service to Lamoine students attending MDI High School. A discussion followed regarding referendum vs. open town meeting. A discussion followed in regard to tuition vs. RSU costs.

Cynthia asked that the motion be read. Stu said it was to put to open town meeting to see if the town wishes to raise and appropriate money for paying the debt service factor for MDI High School students living in Lamoine. Cynthia 2<sup>nd</sup> the motion. **Vote was 2 in favor, 3 opposed (McFarland, Brann, Fennelly).**

Jo moved the same question, except that it be voted on by referendum. Carol Korty said she was upset with the previous vote. She said the Selectmen are not representatives, but they are an administrative body. Richard asked if it was possible that maybe they wanted it done by referendum. Cynthia urged Richard to have the folks who signed Richard's petition to come to town meeting. A short discussion followed.

Jo said she feels the town meeting is the legislative body of the town. Gary said there would still be a public hearing for discussion. Mr. Wallace said he didn't understand how three people can make a decision for the whole town. A heated discussion followed.

Cynthia asked if none of the three would second Jo's motion. Gary said he would like to see the town informed. He said there are lots of questions he can't answer. Jo asked if there could be a plan to have a referendum vote on a certain date and an informational meeting. Gary said he would like to cover all informational options possible. Michael Jordan asked which is more expensive – an open meeting or a referendum. Stu said neither costs all that much, though the referendum is more expensive because of ballot clerks. Jo said the kids are pawns in a political game, and she agreed more information is needed. Richard asked how the information would be provided in a public hearing and whether folks would know it's the right information. A discussion followed on information distribution.

Richard 2<sup>nd</sup> Jo's motion for a referendum. **Vote in favor was 5-0.**

Stu said this should be done prior to July 1<sup>st</sup> to be able to include it in the property tax commitment. Mr. Liebow said the two year notice to shut off the RSU 24 students could happen at the June meeting. Jo asked about existing MDI students from Lamoine, and which class would be affected by that notice. Mr. Liebow said if the notice is served this June, the present Freshman class would not have their senior year at MDI. Jo said that information is needed. Mr. Strong said he didn't think the board would interrupt any student at MDI, so it would be in effect a 3-year notice.

The board discussed the timing of the election, when to sign the warrant, and how to word the question. It was decided the vote would be June 29, 2010, and a public

hearing date would be held around June 15<sup>th</sup>, but it was suggested it not be on a Tuesday due to conflicts with the RSU meetings, and not on June 16<sup>th</sup>, as that is graduation night at the Lamoine School.

Richard suggested, and the board agreed that instead of asking to raise and appropriate, the funding would come from surplus. Stu said he would have a warrant ready for signature for a special selectmen's meeting a week from tonight.

Ms. Korty said she had a request in regard to the information. Jo said the board has to be careful not to be political. A discussion followed on the information format followed.

**Request of Ron Fritz re: Chickadee Lane** – Mr. Fritz said he had an interest in the property next to Chickadee Lane in that he is a partner with the man who owns it. Jo asked what his concern was. Mr. Fritz said his biggest concern is that before any building permit was issued, the fire chief was supposed to sign off on the proposed private roadway. He said he didn't know why the permit was issued. He said Bill Pinkham has been issued 8 permits since 1988 and has never finished any of them. He said if the fire chief had not signed off on the road way, the permit should not have been issued.

Mr. Fritz said he applied for a permit last June and was told that no more permits would be issued until previous ones were completed. Jo asked if the complaint was in regard to Chickadee Lane. Mr. Fritz said he didn't understand why he was being told to finish his project when Mr. Pinkham was not. He said Mr. Pinkham has never completed a project. Richard asked what Mr. Fritz wanted the Board to do. Mr. Fritz said he was concerned that the town is not following its ordinance and he was concerned that a fire truck would not be able to go put out a fire. He asked again how Mr. Pinkham was able to get a building permit when the fire chief did not sign off on the road. Jo asked if Mr. Fritz had spoken to the Planning Board. Mr. Fritz said he spoke with State Representative Rob Eaton who suggested he take this inquiry to the Selectmen. Jo asked if Mr. Fritz had spoken to the Code Enforcement Officer. Mr. Fritz said he did last Tuesday but was told by CEO Ford that he didn't have time for it, and that Mr. Fritz was the only one complaining.

Jo said she can understand Mr. Fritz's frustration, but if people are not breaking the law, it is up to the Code Enforcement Officer. She said if Mr. Fritz feels the CEO did something wrong, he has the right to appeal the decision. She said the Board of Selectmen is not the body to hear such appeals. Stu said he told Mr. Fritz about the appeal avenue.

Mr. Fritz said there are people living on Chickadee Lane and a fire truck cannot get up in there. Richard said the Selectmen were aware that the place burned and that the folks who lived there were told they can't live there until they get a certificate of occupancy from the CEO, and to the best of our knowledge, they were not sure they were living there. Mr. Fritz said he had observations that the buildings were being inhabited.



Jo advised Mr. Fritz to put his complaint in writing and give it to the CEO, and he has to act on it. Mr. Fritz said he did. Deputy CEO Jordan confirmed he had received a complaint from Mr. Fritz earlier in the meeting.

Mr. Fritz asked what the plan is for the fire road. Chief Smith said there are specific requirements for a road longer than 500-feet. A short discussion followed in regard to the road requirements, electrical and insurance.

**Safe Routes to School** – Jo said she was interested to see if the Board would give her the go ahead to pursue a possible grant. She said a lot of kids ride bikes and/or walk to school. She said maybe the town could get some money to build a sidewalk or an off the road path and a crosswalk, plus a flashing light at Mill Road. Cynthia moved to encourage Jo to pursue the grant. Bill 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Business Development Forum** – Stu asked whether refreshments are planned. A short discussion followed – Jo and Cynthia said they would take care of refreshments.

Richard noted that Bangor Hydro owns a subdivision at the head of Route 184 that could be a possible business use. Jo said the Town of Hancock is interested in this forum.

**Town Meeting Format Survey** – Jo asked if instead of having a survey, since no compilation is being done, the document is being presented to the public as something to think about, because they're going to vote on the advisory question in November. Cynthia said things on the survey would really help understand what the voters are thinking as opposed to an up or down vote. Cynthia said maybe a question could be on the survey asking if there is any information a person needs to help make their decision. Richard asked if it matters why they vote it up or down. A long discussion followed.

Richard asked why a survey is being conducted. Jo said the board agreed to try to get the town's opinion between now and November so that it could put out information. She said the survey idea was part of that. She said it's not clear what the Board will do with the information. Cynthia asked about the question that asked about the preference of meeting format, and it was agreed that that question would be removed.

**Utility Pole Flags** – Stu reported Bangor Hydro has given approval for all the poles that have had flags without a renewal needed. Richard said he would take care of getting the flags up. Cynthia said she really appreciates Richard's efforts and Stu's taking them down in the fall.

**Town Clerk/Tax Collector et al job descriptions** – Stu said the information is with the materials handed out tonight. He thanked the board for having him go through the process, as he believes it's a much better document. No action was taken.

**Reappointments** – Stu said he put in the packet the list of folks whose terms expire in June. Selectmen had no objection to contacting those people to ask if they were willing to be reappointed.

**Goals** – A draft of the goals discussed at the previous meeting was in the Selectmen's packet for review. There was no action taken.

**Shellfishing Committee appointments** – Richard noted the issue is ripe, as a community representative committee needs to be selected very soon. Jo moved to appoint Richard as the representative from Lamoine to the Regional Shellfish Ordinance Municipal Joint Board. Cynthia 2<sup>nd</sup>. **Vote in favor was unanimous.**

Jo moved to appoint Paul Davis as the representative to the Shellfishing Conservation Committee and James Norris as the alternate to that committee. Richard 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Axiom/ConnectME grant** – Stu reported that Premium Choice has filed an 11<sup>th</sup> hour objection to Axiom's grant, so that is on hold. He said Mr. Varney from Premium Choice plans to attend the May 27<sup>th</sup> meeting to talk about their plans. He said he was in touch with Gouldsboro's town manager who is very upset at the potential delay in expanding broadband service. He said he also spoke at length with State Representative Rob Eaton who suggested the towns band together and ask Premium Choice to withdraw their objection. Stu said Premium Choice claims 75% coverage of the town, but the maps sent via e-mail don't seem to bear that out, and no one here has even heard of them.

**Shore Road Culvert Replacement Bids** – The following bids were received in response to a request from Road Commissioner Jordan to replace a culvert at 1075 Shore Road:

Bidder	Bid
KJ Dugas	\$10,900
RF Jordan	\$12,480
Peasley & O'Halloran	\$34,474
Jay Fowler	\$8,461
Harold MacQuinn	\$13,660
John W. Goodwin Jr.	\$7,805

There was a brief discussion of the bids. Cynthia moved to award the project to Jay Fowler. Richard 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Next Meeting** – There will be a special meeting at 6:00 PM on May 20, 2010 at the Lamoine School to sign a town meeting warrant for the referendum vote on June 29, 2010. The next regular meeting will be on May 27, 2010 at 7:00 PM. Fire Chief Smith requested to be on the agenda to discuss the proposed water tank at the fire station. He suggested the Board could meet at the fire station sometime.

There being no further business, the meeting adjourned at 10:22 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen